

Message Text

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ACTION L-03

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC 5778

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FOR L/OES--WRIGHT FROM OXMAN

E.O. 11652: N/A

TAGS: LOS

SUBJECT: U.S. V. TEXAS AND FLORIDA

1. WHILE IT WOULD SEEM ISSUE OF FISHING AS CLOSE IN AS NINE MILES WILL LARGELY BE MOOT AS PRACTICAL MATTER AFTER MARCH 1, I SEE NO HARM IN GOING AHEAD WITH SETTLEMENT AND SOME ADVANTAGE, SUBJECT TO FOLLOWING:

(A) DRAFT LETTER TO JUSTICE SHOULD ALSO INDICATE THAT THE U.S. SHOULD NOT COMMIT ITSELF TO EXTENDING THE TERRITORIAL SEA TO 12 MILES, OR STATE IN THE ARGUMENT THAT THIS IS THE ASSUMPTION OF THE USG, IN THE EVENT OF AN LOS TREATY. HOWEVER, I SEE NO OBJECTION TO BASING TERMINATION OF THE SUIT ON THE EXPRESS CONTINGENCY OF U.S. EXTENSION OF THE TERRITORIAL SEA TO 12-MILESPURSUANT TO AN LOS CONVENTION.

(B) I WOULD THINK THAT WE CANNOT COMMIT CONGRESS TO DECIDE THAT SUCH AN EXTENSION WOULD HAVE AN EFFECT ON THE RIGHTS OF STATES, AND ASSUME JUSTICE WOULD WISH TO PRESERVE THAT POINT.

(C) IT IS IMPORTANT TO INDICATE THAT OUR ASSUMPTIONS REGARDING STATE AUTHORITY IN THE TERRITORIAL SEA GO TO FISHING, AND NOT RPT NOT TO ENFORCEMENT OF REGULATIONS ON NAVIGATION (INNOCENT PASSAGE) OR THE DETERMINATION THAT THE VESSEL IS LAWFULLY EXERCISING ITS NAVIGATION RIGHTS. (NOTE THAT ALASKAN ATTEMPTS TO ENFORCE NAVIGATION REGULATIONS IN THE TERRITORIAL SEA IN THE LIMITED OFFICIAL USE

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ALEUTIANS COULD PROVE EMBARRASSING TO OUR STRAITS

POSITION.)

(D) THE FIRST FULL PARAGRAPH ON PAGE 2 OF YOUR COVER MEMO SHOULD BE MORE PRECISE AND RELATE THE TEXAS/ FLORIDA EXCEPTION TO THE 3-MILE RULE. ON PAGE 4, MIDDLE PARA, I WOULD SAY THE BARTLETT ACT "PERMITS" THE DESIGNATION. ON PAGE 6, FOUR LINES FROM BOTTOM, I WOULD SAY WE "SHOULD NOT" AGREE.

(E) DRAFT LETTER FOR MR. LEIGH'S SIGNATURE. IN ADDITION TO COMMENTS ABOVE, I WOULD CHANGE OPENING OF LAST SENTENCE ON FIRST PAGE TO READ, "PROCEEDINGS IN THE SUPREME COURT WOULD BE STAYED UNTIL SUCH TIME AS THE UNITED STATES EXTENDS ITS TERRITORIAL SEA TO 12 NAUTICAL MILES PURSUANT TO INTERNATIONAL AGREEMENT ON SUCH A MAXIMUM LIMIT,...". I BELIEVE "INTERNATIONAL AGREEMENT" IS BROAD ENOUGH TO COVER THE CONTINGENCY OF AN EXTENSION UNDER CUSTOMARY LAW, BUT THIS IS A POSSIBILITY I DO NOT WANT NOT WISH TO STATE OR IMPLY DIRECTLY IN THE ARGUMENT OR DISCUSSIONS WITH ATTORNEYS ON THE OTHER SIDE.
RUSH

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